

154 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Alliance Pipeline L.P.

Docket Nos. RP16-581-000
RP15-1022-000
(Consolidated)

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS,
SUBJECT TO CONDITIONS, AND CONSOLIDATING PROCEEDINGS

(Issued March 3, 2016)

1. On February 2, 2016, Alliance Pipeline L.P. (Alliance) filed revised tariff records¹ to accommodate the future potential for additional processing plants connecting to the Alliance system. The proposal was protested. The Commission accepts and suspends the subject tariff records, subject to conditions, and subject to the outcome of the hearing proceeding established in Docket No. RP15-1022-000, *et al.* The Commission also consolidates the instant proceeding with Docket No. RP15-1022-000, *et al.*

Background and Details of the Instant Filing

2. On June 30, 2015, the Commission issued an order in Docket No. RP15-1022-000 (June 2015 Order), accepting and suspending certain tariff records, subject to refund, and establishing a hearing.²

3. On July 30, 2015, Badlands NGL's, LLC (Badlands) filed a request for clarification or, in the alternative, rehearing of the June 2015 Order's treatment of the proposed change to Alliance's tariff at GT&C section 20.1 concerning a shipper's

¹ See Appendix.

² *Alliance Pipeline L.P.*, 151 FERC ¶ 61,271 (2015) (June 2015 Order).

warranty related to gas processing. Badlands argued that Alliance's proposed change would require shippers to exclusively utilize Aux Sable Liquid Products LP (Aux Sable), an affiliate of Alliance, for natural gas processing.

4. On November 19, 2015, the Commission issued an order in Docket No. RP15-1022-001 (November 2015 Order), clarifying the issues to be reviewed in the hearing established by the June 2015 Order.³ The Commission stated in the November 2015 Order that "Badlands' request for clarification or rehearing is correct in asserting that the Commission in the June 2015 Order intended to set all issues raised by the filing for hearing. In the June 2015 Order, the mention of certain issues for examination at hearing was not intended to foreclose examination of other aspects of the filing at hearing."⁴

5. In the instant filing, Alliance states it is proposing tariff revisions to accommodate the future potential for additional processing plants connecting to the Alliance system by replacing references to the Aux Sable Plant with the more generic term "Processing Plant." Alliance submits that the proposed tariff provisions in the instant filing fully respond to concerns raised by Badlands.

6. Alliance states that the specific change to GT&C section 20.1 and the other proposed, related tariff provisions in the instant filing remove all language from Alliance's tariff requiring Aux Sable to be the exclusive processor for gas transported on Alliance's system. Alliance asserts that the instant filing addresses and resolves the only non-rate issue raised in protests and included in the matters set for hearing by the Commission in the November 2015 Order. Alliance requests that the Commission waive the notice requirements of section 154.207 of the Commission's regulations to allow the tariff records to become effective March 1, 2016.

Public Notice, Interventions and Protests

7. Public notice of Alliance's filing was issued on February 3, 2016. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2015)) of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2015), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

³ *Alliance Pipeline L.P.*, 153 FERC ¶ 61,195 (2015) (November 2015 Order).

⁴ The November 2015 Order, 153 FERC ¶ 61,195 at P 66.

8. Tenaska Marketing Ventures (Tenaska) and Encana Marketing (USA) Inc. (Encana) filed comments. Badlands filed a protest, and a motion to consolidate.

9. Tenaska and Encana both state they do not oppose Alliance's proposal to revise its tariff to permit gas transported on the Alliance system to be processed by processing facilities other than the Aux Sable plant. However, Tenaska and Encana state that, contrary to the suggestion made by Alliance in its transmittal letter, there are other non-rate issues that were set for hearing in the Alliance rate case proceeding that have not been resolved.

10. Badlands protests that Alliance's instant filing is procedurally deficient. Badlands states that Alliance has failed to comply with section 154.204 of the Commission's regulations, 18 C.F.R. § 154.204 (2015).

11. Badlands asserts that Alliance's statement that it is proposing tariff revisions to accommodate the future potential for additional processing plants connecting to the Alliance system by replacing references to the Aux Sable Plant with the more generic term "Processing Plant" is disingenuous. Badlands contends there is no future potential for additional processing plants unless they are owned by Aux Sable because of various commercial arrangements that Alliance has entered into with Aux Sable. Badlands also asserts that shippers have been required to enter into exclusive agreements with Aux Sable, essentially preventing any processing alternatives. Badlands states that the proposed tariff changes are simply "window dressing," which maintain Aux Sable's sole and exclusive extraction rights.

12. Badlands also argues that, contrary to Alliance's claims, the proposed changes do not fully respond to the concerns Badlands has raised in Docket No. RP15-1022-000. In that proceeding, Badlands states it objected to a proposed addition to GT&C section 20.1 requiring shippers to warrant that their gas is subject to an extraction agreement granting Aux Sable the right to extract all natural gas liquids (NGLs) from the shippers' gas. Badlands states that Alliance never explained, much less supported the change to GT&C section 20.1, and the Proposed Processing Changes proposed by Alliance in the instant filing do not remove the contested warranty provision.

13. Badlands states its concerns with Alliance's affiliate relationship with Aux Sable grew after reviewing the pipeline's September 14, 2015 Cost and Revenue Study, which revealed that affiliate transactions accounted for almost 38 percent of Alliance's Operating and Maintenance Expenses. Badlands suggests that additional filings with the Commission reveal that Alliance has entered into heat content management and related agreements that appear to vest Aux Sable, and its affiliates, with the exclusive processing rights on the Alliance system. More importantly, according to Badlands, the financial health of Alliance and Aux Sable are inextricably intertwined: Aux Sable security documents are pledged as collateral to the lenders of Alliance and Alliance Canada.

Consequently, Badlands maintains that for all practical purposes, Alliance and Aux Sable are engaged in a single joint venture.

14. Badlands avers that the exclusive processing arrangement between Alliance and its corporate affiliate, Aux Sable, (1) unduly discriminates against unaffiliated processors and grants an undue preference to the pipeline's affiliate, (2) violates the Commission's interconnection policy, as explained in *Tennessee Gas Pipeline, L.L.C.*,⁵ and (3) is anticompetitive, in violation of the Sherman Act. Badlands states that these are the very concerns with Alliance's exclusive processing arrangement with its affiliate that are being litigated in Docket No. RP15-1022-000.

15. Badlands states that Alliance's exclusive processing arrangement with Aux Sable and, in particular, the proposed warranty in GT&C section 20.1 requiring shippers to warrant that all gas transported by Alliance Canada is subject to an exclusive extraction agreement with Aux Sable (even if the US shipper did not receive service from Alliance Canada) are also among the issues being litigated in Docket No. RP15-1022-000, *et al.*

16. Badlands concludes that given the common issues of fact and law, which are closely intertwined, the Commission should consolidate the instant proceeding with Docket No. RP15-1022-000, *et al.*, to promote administrative efficiency.

Discussion

17. The Commission finds that the issues concerning whether Alliance's proposed gas processing provisions are just and reasonable are present here and in the ongoing hearing in Docket No. RP15-1022-000, and accordingly, it is appropriate to consolidate the two proceedings. The Docket No. RP15-1022-000 proceeding is in the discovery stage and testimony is not scheduled until June; therefore, there should be no serious disruption to the ongoing proceeding, especially since the processing issues raised by the subject filing are already being examined at the ongoing hearing. The Commission also finds as Tenaska and Encana have pointed out, there are other non-rate issues in addition to the processing-related issues that were set for hearing in the ongoing proceeding that have not been resolved and remain part of the consolidated hearing.

18. Finally, since there is no opposition, the Commission finds good cause to waive its notice requirements to allow the tariff records to take effect, subject to conditions, on March 1, 2016, on less than 30 days' notice.

⁵ 143 FERC ¶ 61,128 at PP 59-60 (2013).

Suspension

19. Based upon review of the filing the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission accepts and suspends the effectiveness of the proposed tariff records for the period set forth below, and subject to conditions.

20. The Commission's policy regarding suspension is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.⁶ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.⁷ Here, the revisions move toward an accommodation and remain to be fully examined at hearing. Accordingly, the Commission imposes a nominal suspension period, so that the subject tariff records shall be effective March 1, 2016, consolidated with and subject to the outcome of the hearing proceeding established in the Docket No. RP15-1022-000, *et al.*

The Commission orders:

(A) As set forth in the Appendix, the tariff records proposed by Alliance are accepted and suspended to become effective March 1, 2016, subject to the outcome of the hearing proceeding established in the Docket No. RP15-1022-000.

(B) The Commission consolidates the instant proceeding with Docket No. RP15-1022-000.

⁶ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁷ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(C) Waiver of the notice requirement of section 154.207 of the Commission's regulations is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Alliance Pipeline L.P.
FERC NGA Gas Tariff
Alliance L.P. Database

Accepted and Suspended, Subject to Condition, effective March 1, 2016

[Sheet No. 80, Firm Transportation Service, 5.0.0](#)

[Sheet No. 90, Rate Schedule IT-1, 5.0.0](#)

[Sheet No. 202, , 3.0.0](#)

[Sheet No. 205, , 5.0.0](#)

[Sheet No. 237, , 3.0.0](#)

[Sheet No. 251, , 2.1.0](#)